

# EXHIBIT "B"

Plaintiff's Complaint

Plaintiff's Complaint

# EXHIBIT "B"

1 **COMJD**  
 2 GABROY LAW OFFICES  
 3 Christian Gabroy (#8805)  
 4 Kaine Messer (#14240)  
 5 The District at Green Valley Ranch  
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 12 *Attorneys for Plaintiff*

CASE NO: A-20-814011-C  
 Department 30

EIGHTH JUDICIAL DISTRICT COURT  
 CLARK COUNTY, NEVADA

10 KENNETH FANK, on behalf of himself and  
 11 all others similarly situated;

Case No.:  
 Dept.:

12 Plaintiff,  
 13 vs.

**CLASS ACTION COMPLAINT**

14 AHERN RENTALS, INC.; AX  
 15 TRANSPORTATION LLC; DOES 1-10;  
 16 and ROE CORPORATIONS 11-20,  
 17 inclusive;

Arbitration Exemption Claimed:  
 Class Action

18 Defendants.

- 19 1) Tortious Discharge – Public  
     Policy of Protecting Employees  
     Who Pursue Workers'  
     Compensation Claims
- 20 2) Violation of Americans With  
     Disabilities Act – 42 U.S.C. §  
     12112 et seq.
- 21 3) Negligent Hiring, Training,  
     Supervision and Retention
- 22 4) Injunctive/Declaratory Relief

**JURY TRIAL DEMANDED**

23 **CLASS ACTION COMPLAINT**

24 COMES NOW Plaintiff Kenneth Fank ("Plaintiff" or "Fank"), on behalf of himself  
 25 and all others similarly situated and alleges the following:

26 All allegations in the Complaint are based upon information and belief except for  
 27 those allegations that pertain to the Plaintiff named herein and his counsel. Each  
 28 allegation in the Complaint either has evidentiary support or is likely to have evidentiary  
 support after a reasonable opportunity for further investigation and discovery.

**JURISDICTION AND VENUE**

29 1. This is a civil action for damages under state and federal laws prohibiting

1 unlawful employment actions and to secure the protection of and to redress deprivation of  
2 rights under these laws.

3 2. Jurisdiction and venue are based on 42 U.S.C. § 12101 *et seq.* and Plaintiff's  
4 claims under Nevada law.

5 3. All alleged unlawful employment actions occurred in this judicial district.

6 4. Plaintiff hereby demands a jury trial on all issues triable by jury herein.

7 **THE PARTIES**

8 5. Plaintiff was at all relevant times a resident of the State of Nevada.

9 6. At all relevant times, Defendant Ahern Rentals, Inc. ("Defendant Ahern")  
10 was a domestic corporation registered with the Nevada Secretary of State.

11 7. Defendant Ahern Rentals, Inc. represented to the federal government on  
12 Fank's 2018 W-2 that it was Fank's employer.

13 8. At all times relevant, Plaintiff was an employee of Defendant Ahern  
14 Rentals, Inc. as that term is defined in 42 U.S.C. § 12111.

15 9. At all times relevant, Defendant Ahern Rentals, Inc. was Plaintiff's  
16 employer as that term is defined in 42 U.S.C. § 12111.

17 10. At all relevant times, Defendant AX Transportation LLC ("Defendant AX")  
18 was a domestic limited-liability company registered with the Nevada Secretary of State.

19 11. At all times relevant, Plaintiff was an employee of Defendant AX  
20 Transportation LLC as that term is defined in 42 U.S.C. § 12111.

21 12. At all times relevant, Defendant AX Transportation LLC was Plaintiff's  
22 employer as that term is defined in 42 U.S.C. § 12111.

23 13. Based on information and belief, at all relevant times, Defendants were the  
24 partners, joint ventures, agents, co-conspirators, servants, and employees of each of the  
25 other Defendants herein, and were acting at all relevant times within the scope, purpose  
26 and authority of said partnership, joint venture, agency, service, employment, and  
27 conspiracy, and with the knowledge, consent, permission, acquiescence, and ratification  
28 of their co-defendants.

1           14. The true names and capacities, whether individual, corporate, associate or  
2 otherwise of other Defendant hereinafter designated as DOES 1 through 10 and ROE  
3 CORPORATIONS 11 through 20, inclusive, were individuals who are in some manner  
4 negligent and wrongful towards Plaintiff, were Plaintiff's employer, caused injury to  
5 Plaintiff, and/or otherwise damaged Plaintiff. Plaintiff is further informed and believes,  
6 and therefore alleges, that each of the Defendants, designated as DOES 1 through 10  
7 and ROE CORPORATIONS 11 through 20, are or may be, legally responsible for the  
8 events referred to in this action and other events not mentioned in this action, and  
9 caused damages to Plaintiff. Plaintiff will ask leave of this Court to amend the Complaint  
10 to insert the true names and capacities of such Defendants, when the same have been  
11 ascertained, and to join them in this action, together with the proper charges and  
12 allegations.

13           15. Plaintiff is informed and believes that each Defendant sued herein as DOE  
14 or ROE CORPORATION is responsible in some manner for the acts, omissions, or  
15 representations alleged herein and any reference to "Defendant" or "Defendants" herein  
16 shall mean "Defendants and each of them."

#### PROCEDURAL REQUIREMENTS

17           16. Plaintiff has satisfied all administrative and jurisdictional requirements  
18 necessary to maintain this lawsuit.

20           17. On or about December 18, 2018, Plaintiff timely filed a complaint of  
21 discrimination with the Nevada Equal Rights Commission ("NERC").

22           18. Plaintiff timely completed and filed his Charge of Discrimination with the  
23 Nevada Equal Rights Commission on or about March 19, 2019.

24           19. Plaintiff timely completed and filed his Amended Charge of Discrimination  
25 with the Nevada Equal Rights Commission on or about February 3, 2020. See a true and  
26 correct copy of Plaintiff's Amended Charge of Discrimination attached hereto as Exhibit I.  
27 Such allegations of Exhibit I are hereby incorporated herein this Complaint.

## FACTUAL ALLEGATIONS

20. In or about May of 2006, Plaintiff was offered and accepted a position as a truck driver for Defendants.

21. On or about April 19, 2018, Plaintiff was injured in the course and scope of his employment.

22. Specifically, Plaintiff was injured while pulling a fuel hose.

23. Plaintiff's April 19, 2018 on-the-job injury occurred through no fault of his own.

24. On or about April 20, 2018, Plaintiff filled out a C-4 Worker's Compensation form. See a true and correct copy of the C-4 Worker's Compensation form attached hereto as Exhibit II.

25. Plaintiff was diagnosed with a lumbar strain and abdominal strain. See Exhibit II.

26. On or about April 24, 2019, Defendants issued Plaintiff a Safety Violation Notice regarding the April 20, 2018 injury. See a true and correct copy of the Safety Violation Notice attached hereto as Exhibit III.

27. Such Safety Violation Notice declared that Plaintiff "caused an At Fault Injury to himself when he sprain/strained his back and abdomen pulling a twisting fuel hose." See Exhibit III.

28. Such Safety Violation Notice declared Plaintiff would be "[a]ssessed 8 Points" due to his injury. See Exhibit III.

29. Upon information and belief, Defendants declare to employees they "use[] the point system to review Company employees...who are involved in...workplace accidents."

30. Upon information and belief, Defendants declare to employees the point system "applies to all Employees, including those who drive or operate equipment owned or leased by the Company, regardless of whether the Employee was driving the equipment during business hours at the time of such Actionable Event."

31. Five days after Plaintiff's injury, Defendants terminated Plaintiff on or about April 24, 2018.

32. Defendants' proffered reason for termination Plaintiff was "[e]xceed[ing] the amount of allotted safety points." See a true and correct copy of the Personnel Action Form attached hereto as Exhibit IV.

33. Defendants' proffered reason for terminating Plaintiff was pretextual.

34. Upon information and belief, Defendants maintain a company-wide policy and practice of assessing disciplinary points against employees injured in the course and scope of their employment with Defendant.

35. Upon information and belief, such policy and practice results in the eventual termination of employees assessed a specified number of disciplinary points.

36. Specifically, Defendants represent to their employees "[t]he accumulation of 12 or more points in a single 12-MONTH period may result in the Employee being suspended, reassigned or terminated from the Company in the Company's sole discretion."

37. Upon information and belief, such policy and practice has been common at Defendants' locations in the state of Nevada.

## CLASS ACTION ALLEGATIONS

38. Plaintiff realleges and incorporates by this reference all the paragraphs above in this Complaint as though fully set forth herein.

39. Plaintiff brings this action on behalf of himself and all other similarly situated persons as a class action under Rule 23 of the Nevada Rules of Civil Procedure.

40. The **Nevada Class** is defined as "All Nevada employees of Defendants who were terminated under Defendants' point system used to review employees involved in crashes and workplace accidents within 2 years from the filing of this complaint until judgment."

1       41. Class treatment is appropriate under Rule 23's class certification  
2 mechanism because:

3           a. The Class is Sufficiently Numerous: Upon information and belief,  
4 Defendants employ, and have employed, in excess of 40 Nevada Class Members within  
5 the applicable time period. Because Defendants are obligated to keep accurate  
6 personnel records, Plaintiff alleges that Defendants' records will establish the members  
7 of the Class as well as its numerosity.

8           b. Plaintiff's Claim is Typical to Those of Fellow Class Members: Each  
9 Class Member is and was subject to the same practices, plans, or policies as Plaintiff.  
10 Specifically, the policy and practice of assessing disciplinary points resulting in eventual  
11 termination against employees injured in the course and scope of their employment with  
12 Defendant.

13           c. Common Questions of Law and Fact Exist: Common questions of  
14 law and fact exist and predominate as to Plaintiff and the Class Members, including,  
15 without limitation: whether Defendants maintained a policy and practice of assessing  
16 disciplinary points resulting in eventual termination against employees injured in the  
17 course and scope of their employment with Defendant.

18           d. Plaintiff is an Adequate Representative of the Class: Plaintiff will  
19 fairly and adequately represent the interests of the Class because Plaintiff is a member  
20 of the Nevada Class, he has issues of law and fact in common with all members of the  
21 Class, and his interests are not antagonistic to Class members. Plaintiff and his counsel  
22 are aware of their fiduciary responsibilities to Class Members and are determined to  
23 discharge those duties diligently by vigorously seeking the maximum possible recovery  
24 for Class Members.

25           e. Predominance/Superior Mechanism: Class claims predominate and  
26 a class action is superior to other available means for the fair and efficient adjudication of  
27 this controversy. Each Class Member has been damaged and is entitled to recovery by  
28 reason of Defendants' unlawful policy and practice as alleged herein. The prosecution of

1 individual remedies by each Class Member will tend to establish inconsistent standards  
 2 of conduct for Defendants and result in the impairment of Class Members' rights and the  
 3 disposition of their interest through actions to which they were not parties.

4 **FIRST CLAIM FOR RELIEF**  
 5 **TORTIOUS DISCHARGE –PUBLIC POLICY OF PROTECTING EMPLOYEES**  
 6 **WHO PURSUE WORKERS' COMPENSATION CLAIMS**  
 7 (On Behalf of Plaintiff and the Nevada Class)

8 42. Plaintiff hereby realleges and incorporates every allegation of this  
 9 Complaint as though fully set forth herein.

10 43. On or about April 19, 2018, Plaintiff was injured in the course and scope of  
 11 his employment when he was injured as a result of a work-related incident occurring  
 12 during his shift.

13 44. Plaintiff filed a workers' compensation form on or about April 20, 2018.

14 45. Plaintiff exercised his rights by filling out a Workers' Compensation form on  
 15 or about April 20, 2018.

16 46. Plaintiff was released back to work on or about April 21, 2018 with light  
 17 restrictions.

18 47. At all times relevant, Plaintiff was in compliance with Defendants' work  
 19 performance expectations.

20 48. Four days after filing for Workers' Compensation, on or about April 24,  
 21 2018 Plaintiff was terminated.

22 49. As a result of Plaintiff's unlawful termination, Plaintiff was damaged.

23 50. Defendants terminated Plaintiff for reasons that violate Nevada's public  
 24 policy against terminating Plaintiff for pursuing and filing a Workers' Compensation claim.

25 51. Defendants tortiously terminated Plaintiff for his pursuit and filing of his  
 26 lawful Workers' Compensation Claim.

27 52. Defendants' proffered reasons for terminating Plaintiff were pretextual.

28 53. Defendants' decision to discharge Plaintiff was proximately caused by  
 Plaintiff pursuing and/or filing his workers' compensation claim and was in derogation of

1 the public policy of the State of Nevada.

2 54. As a proximate result of Defendants' tortious discharge of Plaintiff, Plaintiff  
3 has suffered general, special, and consequential damages in an amount in excess of  
4 Fifteen Thousand Dollars (\$15,000.00).

5 55. Defendants' acts and/or omissions were fraudulent, malicious, or  
6 oppressive under NRS 42.005. Pursuant to NRS 42.005 Plaintiff is entitled to an award  
7 of punitive damages in excess of Fifteen Thousand Dollars (\$15,000.00).

8 56. It was necessary for Plaintiff to retain the services of an attorney to file this  
9 action which entitles Plaintiff to an award of reasonable attorney's fees and costs in this  
10 suit.

11 57. As a result of the conduct of Defendant, as set forth herein, Plaintiff has  
12 sustained damages including, but not limited to, attorney fees and costs for the  
13 prosecution, legal advice, and representation herein.

14 58. Plaintiff was forced to retain the services of attorneys to prosecute this  
15 matter.

16 59. Plaintiff seeks recovery of his attorney fees, costs, and expenses.

17 60. As described above, Defendants maintain a policy and/or practice of  
18 assessing disciplinary points resulting in eventual termination against employees injured  
19 in the course and scope of their employment with Defendant.

20 61. As a result, Plaintiff and Nevada Class Members have been terminated by  
21 Defendants in violation of Nevada's public policy of protecting employees who pursue  
22 workers' compensation claims.

23 **SECOND CLAIM FOR RELIEF**  
24 **VIOLATION OF AMERICANS WITH DISABILITIES ACT**  
25 **42 U.S.C. § 12112 et seq.**  
26 (On Behalf of Plaintiff Individually)

27 62. Plaintiff hereby realleges and incorporates every allegation of this  
Complaint as though fully set forth herein.

1       63. At all times relevant, Plaintiff was a qualified individual under the ADA in  
2 that he was an individual with a disability who had a physical impairment that  
3 substantially limited one or more major life activities, had a record of such impairment,  
4 and/or was a person regarded and/or perceived as having an impairment or disability.

5 64. Plaintiff suffered from a lumbar strain and abdominal strain (collectively,  
6 Plaintiff's "Medical Conditions").

7 65. Plaintiff's Medical Conditions constituted a disability as one or more  
8 physical impairments that substantially limited one or more of his major life activities.

9           66. Plaintiff sought medical treatment and continued to receive medical  
10 treatment.

11 67. At all times relevant, Plaintiff informed Defendants of his disability.

12 68. Defendants were aware of Plaintiff's disability.

13 69. Plaintiff requested reasonable accommodations for his disability.

14       70. Plaintiff, with or without reasonable accommodation, could perform the  
15 essential functions of his job.

16 71. Defendants discriminated against Plaintiff on the basis of his disability, in  
17 violation of the ADA, by failing to provide Plaintiff a reasonable accommodation.

18 72. Defendants discriminated against Plaintiff on the basis of his disability by  
19 failing to engage in the interactive process in good faith.

20       73. Defendants discriminated against Plaintiff on the basis of his disability by  
21 ultimately terminating Plaintiff.

22       74.    Although Defendants could have reasonably accommodated Plaintiff's  
23 disability, Defendants terminated him in violation of the ADA.

24 75. Defendants discriminated against Plaintiff in violation of the Americans  
25 with the Disabilities Act, on the basis of an actual and/or perceived disability.

**THIRD CLAIM FOR RELIEF**  
**NEGIGENT HIRING, TRAINING, SUPERVISION, AND RETENTION**  
**(On Behalf of Plaintiff Individually)**

28 76. Plaintiff hereby realleges and incorporates every allegation of this

1 Complaint as though fully set forth herein.

2 77. Defendants had a duty of reasonable care to protect the Plaintiff from the  
3 negligent and/or careless actions of their own agents, officers, employees, and others.

4 78. Defendants had a duty of reasonable care not to hire individuals with a  
5 propensity towards committing unlawful acts against Plaintiff.

6 79. Defendants had a duty to adequately train and supervise their employees  
7 in regards to all correct policies and procedures in regard to harassment, medical leave,  
8 absence, and/or termination policies and procedures.

9 80. Defendants knew and/or should have known that their employees had a  
10 propensity towards committing unlawful acts.

11 81. Defendants breached their duty to Plaintiff by failing to supervise, train, and  
12 hire appropriate personnel.

13 82. As a direct and proximate cause of the foregoing conduct, Plaintiff suffered  
14 harm including loss of income and benefits, severe emotional distress including but not  
15 limited to great mental and emotional harm, anguish, anxiety, insecurity, damage to self-  
16 esteem and self-worth, and shame and humiliation, lack or appetite, and loss of sleep  
17 and/or anxiety.

18 **FOURTH CLAIM FOR RELIEF**  
19 **INJUNCTIVE/DECLARATORY RELIEF**  
(On Behalf of Plaintiff and the Nevada Class)

20 83. Plaintiff realleges and incorporates by this reference all the paragraphs  
21 above in this Complaint as though fully set forth herein.

22 84. As Defendants have maintained a policy and/or practice of assessing  
23 disciplinary points resulting in eventual termination against employees injured in the  
24 course and scope of their employment with Defendants, Defendants have tortiously  
25 discharged employees injured in violation of Nevada public policy.

26 85. Plaintiff and the Nevada Class will suffer irreparable injury if Defendants  
27 are not enjoined from the continuation of its unlawful employment practices.

86. As a result of the aforementioned unlawful employment practices, Plaintiff submits that there has been a likelihood of success on the merits that Plaintiff and the Class Members have been damaged, that there is irreparable harm, and Plaintiff requests that this Honorable Court enter an Order that restrains Defendants from attempting to enforce the alleged unlawful employment practices.

87. Plaintiff requests that this Honorable Court enter a declaration of rights/obligations in regards to all such unlawful deceptive trade practices in this matter.

88. Further, disputes and controversies have arisen between the parties relative to the lawfulness of the trade practices, and Plaintiff is entitled to have an order entered pursuant to Chapter 30 of the Nevada Revised Statutes construing the employment practices and adjudging and declaring Plaintiff and the Class Members' rights and remedies thereunder including such an Order stating that such employment practices are unlawful.

89. Plaintiff has been required to retain the services of an attorney and is entitled to a reasonable award of attorneys' fees and costs.

**WHEREFORE**, Plaintiff, by himself and on behalf of all Class Members prays for a judgment against Defendants as follows:

1. For an order certifying this action as a class action on behalf the proposed Class and providing notice to all Class Members so they may participate in this lawsuit;
2. For an order appointing Plaintiff as the Representative of the Class and his counsel as Class Counsel;
3. For general damages in excess of \$15,000.00;
4. For interest as provided by law at the maximum legal rate;
5. For injunctive relief;
6. For declaratory relief;
7. For liquidated damages;
8. For special damages;

1                   9. For consequential damages;  
2                   10. For punitive damages;  
3                   11. For reasonable attorney's fees and costs incurred in filing this  
4                   action; and,  
5                   12. Such other and further relief as the Court may deem just and proper.

6                   Dated this 22nd day of April 2020.

7                   Respectfully submitted,

8                   GABROY LAW OFFICES

9                     
10                  By: Christian Gabroy (#8805)  
11                  Kaine Messer (#14240)  
12                  The District at Green Valley Ranch  
13                  170 South Green Valley Parkway,  
14                  Suite 280  
15                  Henderson, Nevada 89012  
16                  Tel: (702) 259-7777  
17                  Fax: (702) 259-7704  
18                  christian@gabroy.com  
19                  kmesser@gabroy.com  
20                  *Attorneys for Plaintiff*

# EXHIBIT I

EEOC Form 5 (11-99)

<b>CHARGE OF DISCRIMINATION</b> <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		<b>Charge Presented To:</b> <input checked="" type="checkbox"/> FEPA      0319-19-0132L <input checked="" type="checkbox"/> EEOC      34B-2019-00295	
<b>Nevada Equal Rights Commission</b> <small>State or Local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) <b>Kenneth Fank</b>		Home Phone (incl. Area Code) <b>Redacted</b>	
Street Address <b>Redacted</b>		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency that I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name <b>AX TRANSPORTATION, LLC</b>		No. Employees, Members <b>500+</b>	Phone No. (Include Area Code) <b>(702) 362-0623</b>
Street Address <b>1401 Mineral Ave., Las Vegas, NV 89106</b>		City, State and ZIP Code	
Name <b>AHERN RENTALS / AX TRANSPORTATION</b>		No. Employees, Members <b>500+</b>	Phone No. (Include Area Code) <b>(702) 362-0623</b>
Street Address <b>1401 Mineral Ave., Las Vegas, NV 89106</b>		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).)			
DATE(S) DISCRIMINATION TOOK PLACE Earliest      Latest <b>04/20/2018      04/24/2018</b>			
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)			
<input type="checkbox"/> CONTINUING ACTION			
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <b>AMENDED CHARGE</b> <b>THIS CHARGE IS BEING AMENDED TO REFLECT THE RESPONDENT'S CORRECT NAME AS AX TRANSPORTATION, LLC.</b>			
The Respondent discriminated against me on the basis of disability. I was subjected to unwarranted discipline and discharged. I filed my complaint of discrimination with the Nevada Equal Rights Commission on December 18, 2018.			
I worked for the Respondent as a Truck Driver from May 20, 2006; until I was discharged on April 24, 2018.			
On April 19, 2018, I had a workplace injury which caused my disability.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their		NOTARY - When necessary for State and Local Agency Requirements	

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p>	<p><b>NOTARY - When necessary for State and Local Agency Requirements</b></p>
<p>I declare under penalty of perjury that the above is true and correct.</p>	<p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p>
<p><u>02-03-20</u></p>	<p><b>SIGNATURE OF COMPLAINANT</b></p>
<p><i>Karen L. M.</i></p>	<p><b>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE</b> (month, day, year)</p>
<p><b>Date</b></p>	<p><b>Received NE</b></p>
<p><b>Charging Party Signature</b></p>	

FEB 03 2020

Las Vegas, NV..

EEOC Form 3 (11/09)

<b>CHARGE OF DISCRIMINATION</b>		Charge Presented To:	Agency(ies) Charge No(s):
<small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		<input checked="" type="checkbox"/> FEPA	0318-19-0132L
		<input checked="" type="checkbox"/> EEOC	34B-2018-00295
<b>Nevada Equal Rights Commission</b>		and EEOC	
<small>State or local Agency, if any</small>			

On April 20, 2018, the Respondent was formally put on notice by my doctor of my disability. The same day Muhammad Fejleh, Supervisor, issued me a discipline in the form of a Performance Improvement Notice for Employment Rules Violation.

On April 24, 2018, Chris Nigro, Department Head, and Muhammad, issued me another discipline in the form of a Safety Violation Notice which was back dated to April 19, 2018. Chris and Muhammad then informed me that I was discharged for exceeding the amount of allotted safety points.

I believe once I put the Respondent on notice of my disability, Chris and Muhammad began issuing me unwarranted disciplines to set me up to be discharged.

I believe the Respondent's actions violated the Americans with Disabilities Act Amendment Act (ADAAA) and Nevada State Law.

<small>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</small>		NOTARY - When necessary for State and Local Agency Requirements
<small>I declare under penalty of perjury that the above is true and correct.</small>		<small>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</small> <small>SIGNATURE OF COMPLAINANT</small>
<small>02-03-20</small>  <small>Date</small> <small>Charging Party Signature</small>		<small>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE</small> <small>(month, day, year)</small> <small>Received NERC</small> <small>FEB 03 2020</small>

Las Vegas, NV

# EXHIBIT III

EMPLOYEE'S CLAIM FOR COMPENSATION/REPORT OF INITIAL TREATMENT  
FORM C-4  
PLEASE TYPE OR PRINT

<b>EMPLOYEE'S CLAIM - PROVIDE ALL INFORMATION REQUESTED</b>					
First Name Kenneth		M.I. A	Last Name Fank	Birthday [REDACTED]	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F
Home Address [REDACTED]		Age 49y	Height 70 in	Weight 230 lb	Social Security Number [REDACTED]
City [REDACTED]		State [REDACTED]	Zip [REDACTED]	Telephone [REDACTED]	
Mailing Address [REDACTED]		City [REDACTED]	State [REDACTED]	Zip [REDACTED]	Primary Language Spoken ENGLISH
INSURER Gallagher Bassett		THIRD-PARTY ADMINISTRATOR		Employee's Occupation (Job Title) When Injury or Occupational Disease Occurred driver	
Employer's Name/Company Name Ahern Rentals Inc-Mineral Ave				Telephone (702) 851-3701	
Office Mail Address (Number and Street) 1401 Mineral Ave Las Vegas, NV 89106-4342					
Date of Injury (if applicable) 4-19-18	Hours Injury (if applicable) am 9:00 pm	Date Employer Notified 4-20-18	Last Day of Work After Injury or Occupational Disease 4-20-18	Supervisor to Whom Injury Reported Mohamed Fejzih	
Address or Location of Accident (if applicable) FIRST choice tree					
What were you doing at the time of the accident? (if applicable) working, pulling fuel hose					
How did this injury or occupational disease occur? (Be specific and answer in detail. Use additional sheet if necessary)  through the normal course of work, pulling hose, twisting					
If you believe that you have an occupational disease, when did you first have knowledge of the disability and its relationship to your employment? No				Witnesses to the Accident (if applicable)	
Nature of Injury or Occupational Disease [REDACTED]		Part(s) of Body Injured or Affected Lower back, abdomen			
<p>I CERTIFY THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PROVIDED THIS INFORMATION IN ORDER TO OBTAIN THE BENEFITS OF NEVADA'S INDUSTRIAL INSURANCE AND OCCUPATIONAL DISEASES ACTS (NRS 616A TO 616D, INCLUSIVE OR CHAPTER 617 OF NRS). I HEREBY AUTHORIZE ANY PHYSICIAN, CHIROPRACTOR, SURGEON, PRACTITIONER, OR OTHER PERSON, ANY HOSPITAL, INCLUDING VETERANS ADMINISTRATION OR GOVERNMENTAL HOSPITAL, ANY MEDICAL SERVICE ORGANIZATION, ANY INSURANCE COMPANY, OR OTHER INSTITUTION OR ORGANIZATION TO RELEASE TO EACH OTHER, ANY MEDICAL OR OTHER INFORMATION, INCLUDING BENEFITS PAID OR PAYABLE, PERTINENT TO THIS INJURY OR DISEASE, EXCEPT INFORMATION RELATIVE TO DIAGNOSIS, TREATMENT AND/OR COUNSELING FOR AIDS, PSYCHOLOGICAL CONDITIONS, ALCOHOL OR CONTROLLED SUBSTANCES, FOR WHICH I MUST GIVE SPECIFIC AUTHORIZATION. A PHOTOSTAT OF THIS AUTHORIZATION SHALL BE AS VALID AS THE ORIGINAL.</p>					
Date 04/20/2018	Place Las Vegas, NV	Employee's Signature [REDACTED]			
<b>THIS REPORT MUST BE COMPLETED AND MAILED WITHIN 3 WORKING DAYS OF TREATMENT</b>					
Place Las Vegas, NV	Name of Facility 2908 Brooks Las Vegas North				
Date 04/20/2018	Diagnosis and Description of Injury or Occupational Disease Lumbar strain Abdominal strain		Is there evidence that the injured employee was under the influence of alcohol and/or another controlled substance at the time of the accident? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (if yes, please explain)		
Hour 11:48 AM					
Treatment Toradol 60mg x 1 1/2 Tramadol 50mg - Rx'd			Have you advised the patient to remain off work five days or more? <input type="checkbox"/> Yes - Indicate dates: from _____ to _____ <input checked="" type="checkbox"/> No If no, is the injured employee capable of: <input checked="" type="checkbox"/> full duty <input checked="" type="checkbox"/> modified duty If modified duty, specify any limitations/restrictions: No lift > 10 lb No push/pull > 20 lb No bending		
X-Ray Findings: Normal					
From information given by the employee, together with medical evidence, can you directly connect this injury or occupational disease as job incurred? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
Is additional medical care by a physician indicated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
Do you know of any previous injury or disease contributing to this condition or occupational disease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Explain if yes)					
Date 04/20/2018	Print Doctor's Name RGX Fank		I certify that the employer's copy of this form was mailed to the employer on: 04/20/2018		
Address 151 W Brooks Ave		INSURER'S USE ONLY			
City Las Vegas	State NV	Zip 89030	Provider's Tax I.D. Number 75-2014828	Telephone (702) 399-6545	
Doctor's Signature [REDACTED]		Degree [REDACTED]			

# EXHIBIT III



## Safety Violation Notice

Employee Name: Ken Fank	Position: Fuel Service	Date of Violation: 04/19/2018
Dept/Classification: AXT	Manager: Chris Nigro	Hire Date: 01/04/2018
		EE ID#: 6258

**Describe the Safety Violation:**

Ken caused an At Fault Injury to himself when he sprain / strained his back and abdomen pulling a twisting fuel hose.

Assessed 8 Points, YTD 13 Points

Witness(es) involved:

Previous incident(s):

03/13/2018= At Fault Incident, over filled tank truck and was suspended from the fuel rack for 10 days. 5 Points

**Corrective action taken (Indicate specific program for improvement, correction of deficiencies, measurement criteria, and consequences if improvement is not achieved and continued. Failure to remedy any deficiency may result in termination):**

Ken is to be drug tested and suspended pending our investigation.

If you feel this notice was issued in error, please contact Human Resources within 5 working days for peer review.

**The above safety improvements are required immediately and are expected to continue thereafter.**

I have read and discussed the above and received a copy (signature acknowledges receipt of a copy of this notice only):

Employee Signature:

Date:

4/24/18

Manager Signature:

Date:

Employee Comments:



## Accident Prevention Program

Pursuant to this Accident Prevention Program (the "Program"), the Ahern Family of Companies, including Ahern Rentals, Inc., Xtreme Manufacturing, LLC, Diamond A Equipment, LLC, and AXT Transportation, LLC (each, the "Company") uses the point system to review Company employees (each an "Employee") who are involved in crashes, workplace accidents, DOT violations, and/or traffic citations (each "Actionable Event"). The Program applies to all Employees, including those who drive or operate equipment owned or leased by the Company, regardless of whether the Employee was driving the equipment during business hours at the time of such Actionable Event.

The Company's Risk/Safety Department will review all Actionable Events, and will assess points based on the Risk/Safety Department's application of the Program's point system to the Actionable Event. The Risk/Safety Department's assessment will be added to the Employee's Company driving record and personnel file.

The Company expressly reserves the right to suspend, reassign or terminate an Employee for any and all reasons not otherwise prohibited by applicable law, regardless of the application of the Program and the total points assessed for any Actionable Event.

- All Actionable Events will result in the Employee's suspension until the latter of the Company's receipt of the Employee's drug test results or the Company's completion of a satisfactory investigation into the Actionable Event.
- The accumulation of 12 or more points in a single 12-MONTH period may result in the Employee being suspended, reassigned or terminated from the Company in the Company's sole discretion.
- Three Actionable Events in a single 12-MONTH period may result in the Employee's termination from the Company at the Company's sole discretion.

Employee Name: Ken Fank

Employee#: \_\_\_\_\_

Date of Actionable Event: 04/19/2018

Vehicle#: Back Sprain / Strain

Claim#: \_\_\_\_\_

Date of Review: 04/20/2018

**Section 1**

Was the Employee at fault for the Actionable Event?

No 0 Points  
 Yes 2 Points, see below

If yes, was the Employee at fault for a substantially similar Actionable Event within the immediately preceding 12-MONTH period?

No 0 Points  
 Yes 2 Points

TOTAL POINTS (Maximum 4 Points): 4**Section 2**

What was the aggregate Dollar value of the property/liability damage resulting from the Actionable Event?

\$0 - \$1,000 1 Point  
 \$1,001 - \$5,000 2 Points  
 \$5,001 - \$15,000 3 Points  
 \$15,001 - \$20,000 4 Points  
 \$20,001 - \$25,000 5 Points  
 \$25,001 and above 6 Points

TOTAL POINTS (Maximum 6 Points): 1**Section 3**

Did the Employee receive a citation (other than solely for exceeding the posted speed limit) as a result of the Actionable Event?

No 0 Points  
 Yes 1 Point

TOTAL POINTS (Maximum 1 Point): 0**Section 4**

Was the Actionable Event a crash?

No 0 Points  
 Yes See below

If yes, what type of crash was the Actionable Event? (Select Only One)

Forward moving (slow) 2 Points  
 Backward moving (slow) 2 Points  
 Equipment/Property damage 2 Points  
 Unloading, loading or load securement 3 Points  
 Turn, lane change or merge 3 Points  
 Rear-end other vehicle 4 Points  
 Hit overhead object 5 Points  
 Rollover or loss of control 5 Points

TOTAL POINTS (Maximum 5 Points): 0



## Performance Improvement Notice

Employee Name: Ken Fank

Position: Driver Fuel Service

Date of Incident: 4/20/2018

Dept/Classification: TSP

Manager: Chris Nigro

Hire Date: 11/4/18

EE ID#: 6258

Your conduct and/or work performance is unsatisfactory for the following reason:

Record of Procedural Error  Poor Job Performance  Employment Rule's Violation  Safety Violation  Other

Describe the unsatisfactory conduct or performance:

Violation Standards of Conduct, specifically failure to report an incident immediately. Ken called at 7:45am and the incident occurred during his shift 6:30pm-3:30am.

Witness(es) involved:

Previous incident(s):

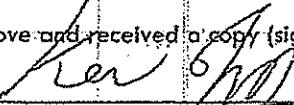
Corrective action taken (Indicate specific program for improvement, correction of deficiencies, measurement criteria, and consequences if improvement is not achieved and continued. Failure to remedy any deficiency may result in termination):

Ken understands that failure to follow all company policies, procedures and my directions will lead to further disciplinary actions, up to and including termination.

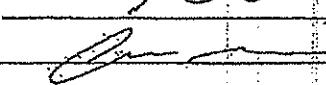
Verbal Warning  Written Warning  Final Written Warning  Investigatory Suspension

The above performance improvements are required immediately and are expected to continue thereafter.

I have read and discussed the above and received a copy (signature acknowledges receipt of a copy of this notice only):

Employee Signature: 

Date: 4/20/18

Manager Signature: 

Date: 4/20/18

Employee Comments:

## Points Assessed Per Section

SECTION 1 (Maximum 4 Points)	4
SECTION 2 (Maximum 6 Points)	1
SECTION 3 (Maximum 1 Point)	0
SECTION 4 (Maximum 5 Points)	0
SECTION 5 (Maximum 3 Points)	0
SECTION 6 (Maximum 0 Points)	0
SECTION 7 (Maximum 3 Points)	3
SECTION 8 (Maximum 1 Point)	0
<b>TOTAL POINTS (Maximum 23 Points):</b>	<b>8</b>

Total points assessed Employee during most-recent 12-MONTH period: 13

## Corrective Action

Ken is over the allowable points with in a 12 month period and subject to termination.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

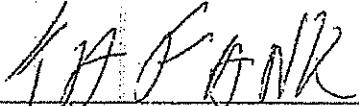
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Employee's Signature:



Date: 4/24/18

Branch Manager's Signature:

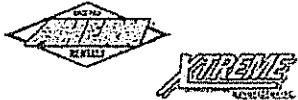
Date:

Safety Manager's Signature:

Rob Mortimer

Date: 04/20/2018

# EXHIBIT IV



## Personnel Action Form (PAF)

Last Clock in: \_\_\_\_\_

Effective Date: 4/24/2018	Employee #: 6258	
Employee Name: Kenneth Fank		
Address: [REDACTED]		
City: Redacted	State: Redacted	Zip Code: Redacted
Telephone #:	Location: HEN	
Department: TSP	Job Title: Driver Fuel	
Date of Hire: 1/4/18	Supervisor: Chris Nigro	

Pay History		
Date	Amount	Reason

Is this a new address?  Yes  No

If Yes, check the benefits plan(s) in which you participate: Actively enrolled in the Health Plan  401(k)

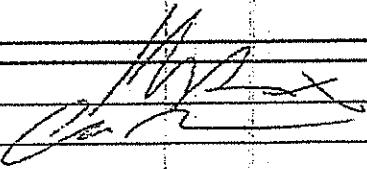
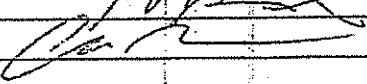
<input type="checkbox"/> Position Transfer	<input type="checkbox"/> Location Transfer	<input type="checkbox"/> Promotion
Demotion	Rate Change (must have evaluation)	Status, Shift, or Hours/Day Change

Termination		
<input type="checkbox"/> Resigned <input checked="" type="checkbox"/> Discharged <input type="checkbox"/> Other: _____		
Reason for termination action: Exceeded the amount of allotted safety points		

NOTE: Send all supporting documentation directly to Human Resources.

Inter-Company Transfers			
From Supervisor: _____	To Supervisor: _____		
Location: _____	Location: _____		
Dept.: _____	Dept.: _____		
Title: _____	Title: _____		
Status: F/T P/T Temporary Hire		Status: F/T P/T Temporary Hire	
Hourly	Salaried	Hourly	Salaried
Commission	Commission	Other:	Other:
Rate: \$ _____	Rate: \$ _____	Rate: \$ _____	Rate: \$ _____

Comments/Special Instructions: _____	

Employee Signature: 	Date: 4/24/18
Branch Manager: 	Date: 4/24/18
Vice President: _____	Date: _____
Human Resources: _____	Date: _____

Send completed PAFs directly to Human Resources/Payroll.